



WISCONSIN REGULATORY DIGEST

A Publication of the FUNERAL DIRECTORS EXAMINING BOARD

Volume 8, No. 2

NOVEMBER, 1998

Court of Appeals Decision Concerning Joint Ownership

On September 10, 1998, the Court of Appeals, District IV, affirmed the judgment of the circuit court and concluded that Cemetery Services International, Inc., and Wisconsin Funeral Services, Inc., under the undisputed facts of the case, have impermissible financial connections with each other in violation of the plain language of sections 157.067(2) and 445.12(6) of the Wisconsin Statutes. The court also concluded that these sections of the statutes are not unconstitutional.

Continuing Education Requirements

Funeral directors are required to obtain 15 hours of continuing education every 2 years and to report that they completed the education by signing a statement on the back of the license renewal application. The Funeral Directors Examining Board wishes to inform licensees that a random audit of your statements on renewal notices can be made at any time and that the

Board may well request a proof of continuing education as part of an investigation of a complaint against a licensee. The penalty for falsifying this information will very likely be severe. There is a very well-known Latin phrase (we'll spare you the Latin) which says: "A word to the wise is sufficient."

Legislative Changes

1997 Wis. Act 139: Under the new law, effective May 5, 1998, an examining board, the Department, and other regulatory authorities are authorized to issue administrative warnings. An administrative warning may be issued to close an investigation if a regulatory authority determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the warning protects the public.

An administrative warning puts the professional on notice that if the misconduct is repeated, the incident that was the basis for the warning can be used to prove that the person knew the conduct was prohibited. A warning is not discipline and may be issued without a

THE WISCONSIN FUNERAL DIRECTORS EXAMINING BOARD

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formal complaint or a hearing. The contents of the warning shall be private and confidential. A credential holder may have a warning reviewed before the department or board that issued the warning. The act requires the department to promulgate rules establishing uniform procedures for administrative warnings. 1997 Wis. Act 139 is available from the department or can be viewed on the Internet at <<http://www.legis.state.wi.us/billtext/acts/97acts.html>>

1997 Wis. Act 191: In April 1998, legislation was enacted which provides for suspension of credentials for failure to pay family support or for failure to comply with a subpoena or warrant related to paternity or support proceedings. The determination of failure to pay family support or failure to comply with a warrant or subpoena will be made by county support agencies or the Department of Workforce Development.

The Department of Workforce Development, after proper notice and provision for hearing, will certify to the Department of Regulation and Licensing that a professional who holds a credential issued by the department, or who is applying for a credential is delinquent in support or has failed to comply with a subpoena or warrant. The department then shall restrict, limit or suspend a credential or deny an application for an initial credential or for renewal of a credential. The credential will remain restricted, limited or suspended until the department receives notification of release from the Department of Workforce Development. However, credentials shall not be sanctioned for more than five years, if instituted because of delinquency in support, or for more than six months if instituted for failure to comply with a subpoena or warrant.

The new family support collection act also requires the Department of Regulation and Licensing to collect social security numbers from all individuals who apply for new credentials. Applications from individuals who do not submit their social security number will be denied. The social security numbers collected may be disclosed only to the Department of Workforce Development for the purpose of enforcing the Family Support Collection Act, or the Department of Revenue for the purpose of checking for tax delinquencies. This act became effective in April 1998. 1997 Wis. Act 191 is available in most public libraries and can be viewed on the Internet at <<http://www.legis.state.wi.us/billtext/acts/97acts.html>>

1997 Wis. Act 237: Since 1996, the law has required the department to verify that applicants for credential renewal are not delinquent in payment of Wisconsin state taxes. The department is required to deny renewal if the Department of Revenue certifies that an applicant is tax delinquent.

Effective January 1, 1999, the scope of the law will expand to apply to other state agencies, including the Department of Transportation and the Department of Natural Resources. The law will also change to include applicants for new licenses and current credential holders. After January 1, 1999, the Department of Regulation and Licensing is required to deny the applications for an initial credential if the applicant is certified by the Department of Revenue as being liable for delinquent state taxes. The Department of Regulation and Licensing will also be required to revoke the credential of current credential holders who are tax delinquent.

A person denied or revoked because of a tax delinquency status may request the Department of Revenue to review the certificate of tax delinquency at a hearing.

The new law, 1997 Wis. Act 237 (section 307 and sections 532-551) is available at most public libraries and can be viewed on the Internet at <<http://www.legis.state.wi.us/billtext/acts/97acts.html>>

Legislation Requested By the Board

The Funeral Directors Examining Board has requested a bill draft which would eliminate the current provisions relating to certificates of good standing. The bill would also eliminate the requirement that an applicant for renewal must furnish proof that the applicant is doing business at a regular licensed establishment.

Sale of Funeral Homes

Charon Holdings Corp. has sold its stock ownership, including its wholly-owned subsidiary, Charon of Wisconsin, Inc., to Hamilton Funeral Service Centers, a California corporation. The sale affects 18 funeral establishments which were sold to Charon by the Loewen Group International, Inc., last year.

The following funeral homes are affected by the sale: Murray Community Funeral Home in Beaver Dam, Murray Community Funeral Home in Horicon, Murray Community Funeral Home in Reeseville, Medema-Gove Community Funeral Home in Randolph, Kohls Community Funeral Home in Waupun, Goodman-Bensman Funeral Home in Milwaukee, Goodman-Bensman Funeral Home in Whitefish Bay, Thomas Hansen & Sons Funeral Home in Kenosha, Lendman-Mischler Funeral Home in Kenosha, Skubal-Slattery Jelenc Funeral Home in West Allis, Overton Funeral Home in Janesville, Fedderly-Axtell Community Funeral Home in Wisconsin Dells, Port Axtell Community Funeral Home in Portage, Edwardson-Axtell Community Funeral Home in DeForest, Acklan Funeral Home in Racine, Laemmrich Community Funeral Home in Menasha, Schauer & Schumacher Funeral Home on

Monroe Street in Green Bay, and Schauer & Schumacher Funeral Home on Fisk Street in Green Bay.

Equity Corporations International, Inc., (ECI) and its subsidiary, ECI Services of Wisconsin, Inc., have merged with Service Corporation International (SCI). As a result of this transaction, the following 13 funeral establishments, some of which, incidentally, had been purchased by ECI during the past year, have changed ownership: Molten-Bell & Son Funeral Home in South Milwaukee, Schramka-Herrick Funeral Home in Menomonee Falls, Schramka Funeral Home in Milwaukee (Burleigh St.), Schramka-Gunther Funeral Home in Cedarburg, Schramka-Rembrowski Funeral Home in St. Francis, Schramka-Densow Funeral Home in Thiensville, Schramka-Nero Funeral Home in Cudahy, Schramka Funeral Home in Milwaukee (Appleton Ave.), Schramka-Matenaer Funeral Home in Hartford, Fuller-Speckien Funeral Home in Eau Claire, Peterson-Volker Funeral Chapel in Chippewa Falls, Steinhaus Funeral Home in Montello (ECI Services of Wisconsin, Inc.), and Steinhaus Funeral Home in Westfield. This merger again raises the joint ownership issue discussed on page 1.

Other funeral establishments which changed ownership between January 1, 1998, and October 9, 1998, are the following (new owner's name in parentheses):

Brown Funeral Home in Minong (Keystone Wisconsin, Inc.), Brown Funeral Home in Solon Springs (Keystone Wisconsin, Inc.), Campbell Funeral Home in Woodruff (Woodruff-Minocqua Funeral Home, Inc.), Colby-Fawcett Funeral Home in Fountain city (Fawcett Funeral Home, Inc.), Dallmann-Kniewel Funeral Home in Medford (TAK Corporation), Dallmann-Kniewel Funeral Home in Rib Lake (TAK Corporation), Eernisse Funeral Home in Belgium (Eernisse Funeral Home, Inc.), Fargo Funeral Home in Kaukauna (Fox Valley Funeral Services, Inc.), Greenwood-Fargo Funeral Home in Kaukauna (Fox Valley Funeral Services, Inc.) Heritage East Troy Funeral Home in East Troy (Heritage West Funeral Services, Inc.), Heritage Palmyra Funeral Home in Palmyra (Heritage West Funeral Services, Inc.), Jansen-Fargo Funeral Home in Kimberly (Fox Valley Funeral Services, Inc.), Koerpel Funeral Home in Hayward (Koerpel Funeral Home, Inc.), Love Funeral Home in Holton (Liberty Service Corp.-WI), Malcore Funeral Home and Crematory, Inc. in Green Bay (Malcore Funeral Home, Inc.), Nelson-Murphy Funeral Home in River Falls (Michael J. Murphy), Stuessy Funeral Home in Monroe (Steil Camacho Funeral Home, Diego Camacho, Jr.), Dull Funeral Home in Baldwin (O'Connell Valley Funeral Home, Inc.)

Legal Clarifications

According to the statutes and rules of the Funeral Directors Examining Board, **persons** who engage in certain activities must obtain a license. A person is an individual, a firm, a corporation, a partnership, cooperative or an association of individuals. Please note that if a corporation, for example, operates a funeral home known as Smith Funeral Home, the person that is licensed is the corporation. "Smith Funeral Home" is only a business or trade name. Note, too, that, if a sole proprietor forms a corporation to operate one or more funeral establishments, the sole proprietor must file a new application with the Board and must obtain a new license for the new person that owns the funeral home.

Sale of Cemeteries

Since the last issue of the Regulatory Digest, the Department of Regulation and Licensing has approved the conveyance of the following cemeteries or interests in cemeteries:

Highland Management Corporation (HMC) was previously approved to convey the assets of Highland Memory Gardens Cemetery to the Loewen Group International, Inc.; however, the Department subsequently approved a modified transaction, whereby the owners of HMC sold all of their stock in HMC to Loewen, rather than the assets of the cemetery. Dated: 5/7/98.

Rest Lawn Memorial Park Cemetery Association was approved to transfer the management and operation of Restlawn Memorial Park Cemetery in the Town of Grand Rapids, WI, to Great Lakes Cemeteries I, a wholly-owned subsidiary of the Loewen Group International, Inc. The association continues to own the cemetery. Dated: 8/2/98.

Roselawn Operations, Inc., which managed the Roselawn Memory Gardens Cemetery in Lake Geneva, WI, was approved to sell all of its stock to the Loewen Group International, Inc. The Roselawn Memory Gardens Association continues to own the cemetery. Dated: 6/11/98.

Shirley Buttolph, was approved to sell her outstanding shares of stock in Cemetery Management, Inc., to the Loewen Group International, Inc. Cemetery Management, Inc., manages the Sunset Memory Gardens Cemetery in Madison. The Sunset Memory Gardens Cemetery Association owns Sunset Memory Gardens Cemetery. Dated: 8/26/98.

Sunset Ridge, Inc., the owner and operator of Sunset Ridge Memorial Park Cemetery in Kenosha, WI, was approved to sell all of its operating assets to the Loewen Group International, Inc., or its assignee, SR Acquisition, Inc. Dated: 7/21/98.

Rest Lawn Memorial Park Association, the owner and operator of Restlawn Memorial Park Cemetery in Wausau, WI, was approved to sell all of its assets to the Tribute Companies, Inc., of Delafield, WI. Dated: 7-11-98.

Issues Relating to Joint Ownership of Funeral Homes and Cemeteries

During the past year the Funeral Directors Examining Board has spent considerable time determining whether a person who intends to purchase a Wisconsin funeral home has any kind of ownership interest in a Wisconsin cemetery. Purchasers have had to make arrangements to avoid such relationships. What is not so well known by funeral directors, however, is that both the funeral director and cemetery laws prohibit a funeral director from being an officer of a cemetery association or corporation, regardless of whether the funeral director is paid.

This law may appear a bit harsh when faced with the practicalities of operating cemeteries in rural communities where the funeral director is the primary person who can be contacted for making burial arrangements at a cemetery. However, many practical relationships and arrangements for providing timely and professional services are still feasible and, admittedly, often necessary.

Connection With Funeral Establishment Prohibited

The following paragraphs quote s. 157.067, Wis. Stats. Note the exceptions in subsection (2m).

(1) In this section, "funeral establishment" has the meaning given in s. 445.01 (6).

(2) No cemetery authority may permit a funeral establishment to be located in the cemetery. No cemetery authority may have or permit an employee or agent of the cemetery to have any ownership, operation or other financial interest in a funeral establishment. Except as provided in sub. (2m), no cemetery authority or employee or agent of a cemetery may, directly or indirectly, receive or accept any commission, fee, remuneration or benefit of any kind from a funeral establishment or from an owner, employee or agent of a funeral establishment.

(2m) A cemetery authority may accept a fee or remuneration from a funeral establishment or from an owner, employee or agent of a funeral establishment if all of the following requirements are satisfied:

(a) The fee or remuneration is a payment to the cemetery authority for a burial in the cemetery authority's cemetery.

(b) The fee or remuneration payment is made on behalf of the person who is responsible for paying for the funeral establishment's services.

(c) The funeral establishment will be reimbursed for the fee or remuneration by charging the person who is responsible for paying the funeral expenses an amount that is identical to the amount of the fee or remuneration paid by the funeral establishment to the cemetery authority.

Examination Dates in 1999

<u>Exam Date</u>	<u>Application Deadline</u>
January 28 1999	December 28, 1998
April 22, 1999	March 22, 1999
July 8, 1999	June 8, 1999
October 21, 1999	September 21, 1999

Amendments to Pre-Planning Guide

Many readers have received a copy of the guide at continuing education programs or elsewhere. Please note that page 4 has been revised. This page contains 2 paragraphs under the heading "Statement of funeral goods and services." The changes relate to price guarantees and increases in cost of items included in a burial agreement. Anyone using the brochure will receive revised copies when they order more; however, they may continue to use previous copies until then. The current brochure is dated September 1998.

Complaints Against Credential Holders

Between January 1, 1998 and September 16, 1998, the Board had received 29 complaints against credential holders. Twenty-two complaints were closed at the screening stage; they were not opened for investigation. However, the board did close 30 cases after investigation (obviously, many of these were pre-1998 cases). Eighteen cases remain open for investigation or legal action.

The Funeral Directors Examining Board and other boards in the Department are determined to expedite the processing of complaints against credential holders. The screening process has led to not opening investigative cases which have little likelihood of resulting in disciplinary action. In spite of the screening process, some lengthy investigations still do not result in discipline. Sometimes cases are closed after the Board has carefully reviewed the facts of the cases and the purpose of discipline. The purpose is not to punish a specific licensee, but to deter continued or future wrongdoing. There are lots of ways to deter violation of statutes and rules without, necessarily, taking discipline. Some complainants are convinced that the board is there to protect them individually, but,

in fact, the board's role is to do what is best to protect the public as a whole. Sometimes licensees do not always agree with the board's decision to close one or other case. Proving cases with facts is sometimes more difficult than one might think.

Cemetery Task Force

Secretary Marlene Cummings has announced that she will form a multi-disciplinary task force to review the laws which regulate cemeteries in Wisconsin and to make recommendations for revising these laws. A representative from both the Wisconsin Funeral Directors Association and the Funeral Service Alliance of Wisconsin have been invited to membership. So have cemeterians, and many others who represent interests relating to cemeteries. The creation of this task force was the result of serious problems experienced with the Evergreen Cemetery in Milwaukee. The cemetery was very poorly maintained, there were allegations of stacking bodies, and there were problems locating graves. Several bodies were exhumed. Some were in the proper location. Others were not. The most serious problem relating to this situation is that Wisconsin statutes give the Department of Regulation Licensing little authority to regulate the maintenance of cemeteries. Another problem is that municipalities are required to take over abandoned cemeteries and operate them at taxpayers' expense. We'll keep you updated on the recommendations of the task force in future editions of the Regulatory Digest.

Amendment of Solicitation Rules

The Board has voted to begin the rulemaking process for the purpose of amending s. FD 6.10, which has a sunset date of January 1, 2000, relating to the solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy. The rule provisions pertain to live voice contacts and automatic or artificial telephone dialing systems. Eventually a rule draft will be prepared and a hearing will be held. Until then, the rule remains precisely as it now stands.

Training Programs For Agents of Burial Agreements

Funeral directors and insurance agents have expressed a problem obtaining the 20 hours of training in a timely manner. The problem stems from the fact that some courses have been canceled, because the provider had an insufficient number of students scheduled. Thus, a request has been made to the Board to permit students to take the training course in a monitored location with attendance strictly enforced, but with either live or videotaped instructors. The board had discussion at several meetings and was anticipating having more discussion and taking action at its meeting on November 17, 1998. Some people have asked the Board to change the law and provide for a

90-day window during which the agent could sell insurance-funded burial plans without completing the training; however, the Board voted against this proposal. We will tell you about the final resolution of this issue in the next Regulatory Digest.

Disciplinary Actions

WILLIAM J. SANSOM

SANSOM FUNERAL HOMES

STOCKBRIDGE WI

REPRIMAND

Renewal of application denied because owed delinquent taxes. Pay costs of \$150. Effective 5/19/98. FD 3.02(1)(9). Case #LS9805192FDR.

BENJAMIN H. BARBOUR, FUNERAL DIRECTOR

EDGERTON WI

SUSPENDED INDEFINITELY

On 2/28/95 while transporting a body in a vehicle registered to the funeral home he was arrested for operating a vehicle while influenced by an intoxicant and was later convicted of this offense. He was convicted of OWI in 1976, 1982 and 1990. In November of 1995 he signed an agreement not to consume alcohol. On 1/24/97 he received a citation for OWI and disorderly conduct and was convicted. The suspension is stayed for four months with limitations. Effective 9/22/98. FDR 3.02(4)(6). Case #LS9809221FDR.

Other Actions

From 1988 to 1989, Edmund R. Fennig and the Fennig Funeral Home in Milwaukee engaged in certain activities related to the sale of PNS, Inc., a type of pre-need insurance used to fund funeral arrangements. Those activities were found to be in violation of the applicable state statutes and administrative rules. However, the violations were found to be unintentional, and Mr. Fennig ceased his involvement in those activities in 1989. Accordingly, no discipline was imposed, although the costs associated with this matter were ordered to be paid.

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Application Processing & Requirements	Press 42
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Copies of Regulatory Digest on the Web

See Web Site for past digest(s).

Wisconsin Statutes and Code

Copies of the Funeral Directors Examining Board Statutes and Administrative Code can be ordered through the Board Office. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated November, 1997.

Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes are not automatically provided.

WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.

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